IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. ~~769~~ 70-13

BUFORD ELLINGTON, Governor of the State of Tennessee; DAVID M. PACK, Attorney General of the State of Tennessee; JOE C. CARR, Secretary of State of the State of Tennessee; SHIRLEY G. HASSLER, Coordinator of Elections of the State of Tennessee; GEORGE C. THOMAS, Chairman of State Board of Elections of the State of Tennessee; LYTLE LANDERS and JAMES E. HARPSTER, Members of the State Board of Elections of the State of Tennessee; THOMAS W. JARRELL, Chairman of Davidson County Election Commission; ALBERT H. THOMAS, IMOGENE MUSE, J. GRANSTAFF DALE and JOHN H. HENDERSON, Members of the Davidson County Board of Elections; and MARY P. FERRELL, Registrar-at-Large of Davidson County, State of Tennessee,

Appellants,

vs.

JAMES F. BLUMSTEIN,

Appellee.

On Appeal from the Three Judge United States District Court for the Middle District of Tennessee, Nashville Division

APPELLANTS' BRIEF

THOMAS E. FOX
Deputy Attorney General
ROBERT H. ROBERTS
Assistant Attorney General
Supreme Court Building
Nashville, Tennessee 37219
Attorneys for Appellants

DAVID M. PACK
Attorney General
State of Tennessee
Of Counsel.

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St. 63101 314-231-4477

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APPELLANTS' BRIEF

Appellants appeal from the judgment of the Three Judge United States District Court for the Middle District of Tennessee, Nashville Division, entered on September 9, 1970, striking down the constitutional and statutory provisions in Tennessee for residency requirement for voting; and submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal, and that a substantial question is presented.

OPINION BELOW

The opinion of the District Court is as yet unreported. Copies of the opinion, findings of fact, conclusions of law and judgment, and order implementing the same, are incorporated in a Single Appendix heretofore filed.

JURISDICTION

This suit was brought under 28 United States Code, Section 2201, seeking declaratory judgment, and for injunctive relief pursuant to 28 U. S. C., Section 2202, 42 U. S. C., Section 1893 and 28 U. S. C., Section 1343. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1253, for direct appeal from Three Judge District Courts, pursuant to 28 U. S. C., Sections 2281 and 2282.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The State constitutional and statutory provisions, which the United States District Court struck down as being void and violative of the 14th Amendment of the United States Constitution, are as follows:

Article IV, Section 1, Tennessee Constitution:

"**Right to vote—Election precincts—Military Duty.**—Every person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein such person may offer to vote for three months, next preceding the day of election, shall be entitled to vote for electors for President and Vice-President of the United States, members of the General Assembly and other civil officers for the county or district in which such person resides; and there shall be no other qualification attached to the right of suffrage.

The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box.

All male citizens of this State shall be subject to the performance of military duty, as may be prescribed by law. [As Amended: Adopted in Convention May 25, 1953; Approved at election November 3, 1953; Proclaimed by Governor November 19, 1953.]"

And,

Section 2-201, Tennessee Code Annotated:

"**Qualifications of voters.**—Every person of the age of twenty-one (21) years, being a citizen of the United States and a resident of this State for twelve (12) months, and of the county wherein he may offer his vote for three (3) months next preceding the day of election, shall be entitled to vote for members of the general assembly and other civil officers for the county or district in which he may reside. [Acts 1870, ch. 10, § 1; 1873, ch. 1, § 1; Shan., § 1167; mod. by U. S. Const., Amend. 19; Code 1932, § 1937; Acts 1957, ch. 22, § 1.]"

And, further,

Section 2-304, Tennessee Code Annotated:

"**Persons entitled to permanently register—Required time for registration to be in effect prior to Election.**—All persons qualified to vote under existing laws at the date of application for registration, including those who will arrive at the legal voting age by the date of the next succeeding primary or general election established by statute following the date of their application to register (those who become of legal voting age before the date of a general election shall be entitled to register and vote in a legal primary

election selecting nominees for such general election); who will have lived in the state for twelve (12) months and in the county for which they applied for registration for three (3) months by the date of the next succeeding election shall be entitled to permanently register as voters under the provisions of this chapter, provided, however, that registration or re-registration shall not be permitted within thirty (30) days of any primary or general election provided for by statute. If a registered voter in any county shall have changed his residence to another county, or to another ward, precinct or district within the same county, or changed his name by marriage or otherwise, within ninety (90) days prior to the date of an election, he shall be entitled to vote in his former ward, precinct or district of registration.

The cases believed to sustain the jurisdiction of this Court are: the 1970 Voting Rights Act cases *sub nomine, United States v. Arizona,* ... U.S. ..., 39 U.S.L.W. 4027 (December 22, 1970); *Pope v. Williams,* 193 U.S. 621 (1904); *Drueding v. Devlin,* 234 F. Supp. 721 (D. Md. 1964), aff'd, Per Curiam, 380 U.S. 125; *Carrington v. Rash,* 380 U.S. 89 (1965); *Lindsley v. Natural Carbonic Gas,* 220 U.S. 61 (1911); *McGowan v. Maryland,* 366 U.S. 420 (1961).

QUESTIONS PRESENTED

I

Whether Article IV, Section 1, of the Tennessee State Constitution, which requires twelve (12) months residency in the State and three months residency in the County prerequisite to voting, is repugnant to the constitution of the United States and, therefore, null, void and of no effect.

II

Whether Sections 2-201 and 2-203, of Tennessee Code annotated, which implements Article IV, Section 1, of the Tennessee State Constitution, so as to impose a twelve (12) months in-state and three (3) months in-county durational residency requirement for voting, is repugnant to the Constitution of the United States, and, therefore, null, void and of no effect.

III

Whether or not the "Compelling State Interest" doctrine has supplanted the "irrational or unreasonable" doctrine in prescribing durational residency requirements for voting, to the extent that no durational residency requirements may be imposed by States on voters.

STATEMENT OF THE CASE

On July 17, 1970, James F. Blumstein, Plaintiff below and Appellee herein, brought suit in his own behalf, and on behalf of all others similarly situated, for declaratory judgment and supplemental injunctive relief. The suit attacked the three months in-county and twelve months in-state durational residency requirement on voting and voter registration, contained in Article IV, Section 1, of the Tennessee State Constitution, as implemented in Sections 2-201 and 2-304, Tennessee Code Annotated. The suit alleged that such was repugnant to the United States Constitution.

On August 31, 1970, an order was entered by the Three-Judge District Court, permitting Plaintiff to maintain his suit as a class action, and rendering an opinion in the case. Prior to the entering of the opinion, a hearing had been held before the District Court, on a request for a temporary injunction to permit the Plaintiff to cast his

vote in the August 6, 1970 primary and general elections. The District Court refused to issue the temporary injunction and also denied a motion that the Plaintiff be allowed to cast a sealed provisional ballot for such election.

At the time of this hearing, July 30, 1970, it was agreed that it would be unnecessary to take evidence in the matter and that such would be submitted to the Court on brief and argument. On August 31, 1970, the opinion was rendered, granting the Plaintiff the relief prayed for, striking down the constitutional and statutory provisions in Tennessee. The order implementing this decision was entered on September 9, 1970.

THE QUESTIONS ARE SUBSTANTIAL

The action of the Three Judge District Court, in striking down all residency requirements for voting, is an unprecedented decision, in conflict with all previous opinions of the United States Supreme Court in upholding the validity of the state to impose reasonable requirements on the availability of the ballot, including that of durational residency requirements. The last case decided by this Honorable Court, directly on point, passing on a state durational residency requirement for voting which was substantially identical to those requirements in Tennessee, was *Druedling v. Devlin*, 234 Fed. Sup. 721 (D.C., Md. '64), Affirmed per curiam 380 U.S. 125 ('65). This Court has recognized such requirements in later cases, including that of *Kramer v. Union Free School Dist.*, 395 U.S. 621 (1969), 89 S.Ct. 1886.

This Court, recently, in *Walz v. Tax Commission of the City of New York*, 397 U.S. 664, 25 L.Ed.2d 697, 90 S.Ct. 1409, in the majority opinion written by the Chief Justice, said:

> "Nearly fifty years ago Mr. Justice Holmes stated: 'If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it. . . .' *Jockmon v. Rosenbaum Co.*, 260 U.S. 22, 31, 67 L.Ed. 107, 112, 43 S.Ct. 9 (1922)."

Appellants are aware of at least twelve Federal District Court decisions, including the instant one, in which three-judge courts have resolved this issue. Four of these courts have sustained durational residency statutes of one year. *Howe v. Brown*, ... F. Supp. ..., No. C-70-905 (N.D. Ohio 1970); *Fitzpatrick v. Board of Election Commissioners*, ... F. Supp. ..., 39 U.S.L.W. 2356 (N.D. Ill. 1970); *Cocanower v. Marston*, 318 F. Supp. 402 (D. Ariz. 1970); *Epps v. Logan*, ... F. Supp. ..., No. 9137 (W.D. Wash. 1970). Three of these courts found a one-year residency requirement unconstitutional. *Burg v. Canniffe*, 315 F. Supp. 380 (D. Mass. 1970); *Bufford v. Holton*, ... F. Supp. ..., 39 U.S.L.W. 2253 (E.D. Va. 1970); *Lester v. Board of Elections*, ... F. Supp. ..., 39 U.S.L.W. 2292 (D.D.C. 1970). One court invalidated both a one-year statewide and a three-month county residency requirement. *Blumstein v. Ellington*, ... F. Supp. ..., Civ. Action No. 5815 (M.D. Tenn. 1970). Two courts invalidated six month requirements. *Affeldt v. Whitcomb*, ... F. Supp. ..., Civil No. 70 H 220 (N.D. Ind. 1970); *Keppel v. Donovan*, ... F. Supp. ..., No. 4-70 Civ. 423 (D. Minn. 1970). One court invalidated non-statewide requirements of six and three months but did not rule on the validity of a one year statewide requirement because it was not in issue. *Hadnott v. Amos*, ... F. Supp. ..., 39 U.S.L.W. 2263 (M. D. Ala. 1970). In addition to these three-judge courts, one District Court Judge refused to convene a three-judge court and summarily dismissed the complaint. *Sirak v. Brown*, ... F. Supp. ..., Civil Action No. 70-164 (S.D. Ohio 1970). A three-judge California court invalidated the state's one-

year residency requirement. *Keane v. Mihaly*, ... Cal. App. ..., Ct. of Appeal, 1st Dist., Div. 4, No. 1 Civ. 28707 (1970). Two cases are awaiting resolution as this statement goes to the printer. *Piliavin v. Hoel*, No. 70-C-255, W.D. Wisc.; *Miles v. McCraw*, No. HS-70-C-31, W.D. Ark.

At least four of the aforementioned cases have been docketed in this Court during the current term. *Canniffe v. Burg*, Docket No. 811; *Ellington v. Blumstein*, Docket No. 769; *Whitcomb v. Affeldt*, Docket No. 1081; *Amos v. Hadnott*, cross appeals, Docket Nos. 882 and 1139.

The diversity of judicial opinion does not arise because of the different facts developed in each case but rather from varying interpretations of previous decisions of this Court in which the "compelling state interest" test was used to determine the constitutionality of state legislation which was assailed under the Equal Protection Clause of the Fourteenth Amendment. e. g. *Kramer v. Union Free School District*, 395 U.S. 621 (1969); *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *Evans v. Cornman*, 398 U.S. 419 (1970); *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970).

ARGUMENT

Appellants insist that it is a substantial question any time a United States District Court renders a decision in direct conflict with the United States Supreme Court decisions existing at such time. The United States District Court, in taking such drastic action in opposition to former Supreme Court holdings, did so as a result of what it found to be an evolutionary trend in this country to replace the "irrational or unreasonable" test for the constitutionality of voting rights as enunciated in the previous cited opinions and numerous other opinions of the United States Supreme Court, has been superseded by the "compelling state interest" test mentioned by Congress in Subsection 6 of the 1970 amendments to the Voting Rights Act.

Appellants further would insist that even if the "compelling interest" doctrine is substituted for the "irrational or unreasonable" doctrine, that such still should not completely abolish the right of the state to impose any residency requirements for voting. The Constitution surrounded the right of suffrage with some inconveniences and authorized the Legislature to attach more. Such inconveniences, when uniformly applied, in no wise infracts the 14th Amendment of the Constitution of the United States. Article 4, Section 4 of that instrument guarantees to every state in the Union a republican form of government. No government can be republican that fails to secure the purity of elections. By these terms of the United States Constitution, the Legislature of each state has the organic authority for the passage of such laws as will secure that purity, and it cannot be urged that such laws abridge the privileges or immunity of the citizens. In the matter of voting, the only privilege one has is to cast his ballot fairly and not interfere with others by fraud, force or duress. His privileges are personal.

Certainly it cannot be said that it is not a "compelling state interest" to:

1) insure the purity of the ballot box through proper legislation, by protection against fraud through colonization and inability to identify persons offering to vote, and

2) afford some surety that the voter has, in fact, become a member of the community and that as such, he has a common interest in all matters pertaining to its government and is, therefore, more likely to exercise his right more intelligently. *18 Am. Jur.*, Elections, p. 217.

These long recognized purposes of residency requirements are valid equally under the "compelling state interest" doctrine and the "irrational or unreasonable" doctrine. It might well be that these purposes can be achieved under requirements of shorter duration than that imposed by the State of Tennessee, as well as the majority of the other states of the Union, under present constitutional and statutory provisions and laws.

The District Court held that the only constitutionally permissible purpose of durational residency requirements is to secure the freedom and purity of the ballot boxes in the various counties of the state, and preventing plural voting, and by requiring electors to vote in the precincts in which they reside. This language is pulled, by the Court, from Section 2-301, Tennessee Code Annotated. Such holding completely ignores the above mentioned, time-proven and accepted purposes for imposing durational residency requirements. The District Court further held that this section of the Tennessee Code Annotated is the only one in Tennessee law dealing specifically with protection of the "compelling state interest" doctrine it holds to be controlling.

In a recent opinion of a Three Judge District Court in Massachusetts, in the case of *Burg v. Caniffe et al.*, opinion

dated July 8, 1970, that Court struck down the six months residency within the state requirement then existing, but permitted to stand the six months requirement in the district. That Court also based its decision on the "compelling state interest" doctrine, but recognized that some residency requirements are valid even under that doctrine, holding that there was nothing before the Court to show that the second six months served a "compelling state interest," but stating no opinion as to whether any other durational residency requirement short of twelve (12) months might be found to serve a compelling state interest. Stated differently, it acknowledges the need but admits that it cannot draw a line and justify it, but simply rejects the line drawn by the state constitution and the Massachusetts legislative body.

In drawing the line, so far as the time of residency is concerned, either under "compelling state interest" doctrine or "irrational or unreasonable" doctrine, this Honorable Court, in *Kramer v. Union Free School District*, supra, said:

> "Clearly a state may reasonably assume that its residents have a greater stake in the outcome of elections held within its boundaries than do other persons. Likewise, it is entirely rational for a state legislature to suppose that residents, being generally informed regarding state affairs than are non-residents, will be more likely than non-residents to vote responsibly. And the same may be said of legislative assumptions regarding the electoral competence of adults and of literate persons on the one hand, and of minors and illiterates on the other. It is clear, of course, that lines thus drawn can not infallibly perform their intended legislative function. Just as illiterate people may be intelligent voters, non-residents or minors may also in some instances, be interested, informed and intelligent

participants in the electoral process. Persons who commute across a state line to work may well have a great stake in the affairs of the state in which they are employed; some college students under twenty-one may be both better informed and more passionately interested in political affairs than many adults, but such discrepancies are the inevitable concomitant of the line drawing that is essential to law making. **So long as the classification is rationally related to a permissible legislative end therefore—as are residence, literacy and age requirements imposed with respect to voting—there is no denial of equal protection.**" (Emphasis supplied.)

Thus, it is submitted, the power to establish a residency qualification must carry with it the power to choose one year or six months as a reasonable voting requirement as a vast majority of the States have done.[1]

The inapplicability of the compelling interest standard becomes more pertinent when one considers the language of Mr. Justice Black in writing for the Court, again in *Oregon v. Mitchell*, wherein on page ten he discusses the Fourteenth Amendment as follows:

"Above all else, the Framers of the Civil War Amendments intended to deny to the States the power

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[1] The following tabulation compiled from Table 1, *Voting Residency Requirements*, 38 George Washington L.Rev. 96-97 (October 1969), summarizes as of that date the residency requirements for voting in elections, other than presidential, of the fifty States of the United States and the Territories of Guam, Puerto Rico, and the Virgin Islands:

Requirement	*Number of States*	*Number of Territories*
Two years	1	1
One year	32	2
Six months	15	
Three months	1	
Ninety days	1	

to discriminate against persons on account of their race. *Loving v. Virginia*, 388 U.S. 1 (1967); *Goimillion v. Lightfoot*, 364 U.S. 339 (1960); *Brown v. Board of Education*, 347 U.S. 483 (1954); *Slaughter House* cases, 16 Wall. 36, 71-72 (1872). While this Court has recognized in some instances that the Equal Protection Clause of the Fourteenth Amendment protects against discriminations other than those on account of race [citations omitted], *it cannot be successfully argued that the Fourteenth Amendment was intended to strip the States of their power, carefully preserved in the original Constitution, to govern themselves. The Fourteenth Amendment was surely not intended to make every discrimination between groups of people a constitutional denial of equal protection. Nor was the Enforcement Clause of the Fourteenth Amendment intended to permit Congress to prohibit every discrimination between groups of people.* On the other hand, the Civil War Amendments were unquestionably designed to condemn and forbid every distinction, however trifling, on account of race." (Emphasis added.)

A second issue that is raised by this litigation is to what extent *Shapiro v. Thompson*, 394 U.S. 618 (1969), limits the power of a state to impose a residency requirement for voting. Appellants urged the District Court that there must be some evidence to indicate a deterrence of or infringement on the right to travel before the instant residency statute could be found constitutionally infirm on the basis of *Shapiro, supra.*

It is submitted that the vice of the welfare statute in *Shapiro, supra,* was its objective to deter interstate travel insofar as this was a substantial impediment and deterrent to welfare recipients to travel to the states which had this type of statute. Counter-balancing this statutory scheme was an absence of a compelling state interest. On the

other hand, durational residency requirements to vote obviously have neither the same objective nor effect. Thus, it is submitted that the District Court erred in its interpretation of *Shapiro v. Thompson, supra.* Appellants believe their position is buttressed by footnote 21 of this Court's opinion in *Shapiro, supra,* at p. 638, where this Court stated that the views of that opinion should not be construed to imply any view on the constitutionality of durational residency requirements for voters.

We believe that the appropriate standard to measure the constitutionality of a durational residency requirement was enunciated by this Court in *McGowan v. Maryland,* 366 U.S. 420 (1961).

> Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. *Id.* pp. 425-26.

See also, *Lindsley v. Natural Carbonic Gas,* 220 U.S. 61 (1911).

We do not believe that this Court has abandoned this "rational purpose" or "McGowan" standard just because voting is involved. See *McDonald v. Board of Election,* 394 U.S. 802 (1969). In the instant type of case, if it is concluded that the State has utilized only that power which it has been granted specifically—the power to fix

residency qualifications for voters—then we submit that the only issue is whether that power was used within the limitations set forth in *McGowan v. Maryland, supra.*

We believe that this Court's decision in *United States v. Arizona, supra,* and the cases companion thereto support appellants' position that the 'McGowan' test, *McGowan v. Maryland, supra,* should be used to determine the constitutionality of Tennessee's residency requirement for voting. We further believe that the District Court misconstrued the effect and meaning of *Shapiro v. Thompson, supra.* Absent special circumstances such as a presidential election where national, rather than local issues and interests predominate, we believe the dictates of *Shapiro* extend to invalidate only those statutes which demonstrably burden the right to interstate travel.

The fact that the voting privilege has been extended to 18 year old persons [*U. S. v. Arizona,* 91 S.Ct. 260] in federal elections, and will doubtless be extended by Constitutional Amendment to state elections, increases, rather than diminishes, the need for durational residency requirements. The two basic purposes served by residency requirements are: 1) INSURE PURITY OF BALLOT BOX—Protection against fraud through colonization and inability to identify persons offering to vote, and 2) KNOWLEDGEABLE VOTER—Afford some surety that the voter has, in fact, become a member of the community and that as such, he has a common interest in all matters pertaining to its government and is, therefore, more likely to exercise his right more intelligently. [18 *Am. Jur.*, Elections, p. 217.]

This is valid reasons accepted by the Courts and the people of this Country since this Government was formed. It is not only "rational" and "reasonable" but the very fact that it is "rational" and "reasonable" regulation makes it of "Compelling State Interest." It is so gen-

erally known, as to be judicially accepted, that there are many political subdivisions in this state, and other states, wherein there are colleges, universities and military installations with sufficient student body or military personnel over eighteen years of age, as would completely dominate elections in the district, county or municipality so located. This would offer the maximum of opportunity for fraud through colonization, and permit domination by those not knowledgeable or having a common interest in matters of government, as opposed to the interest and the knowledge of permanent members of the community. Upon completion of their schooling, or service tour, they move on, leaving the community bound to a course of political expediency not of its choice and, in fact, one over which its more permanent citizens, who will continue to be affected, had no control.

SUMMARY

Article I, Section 2, and the Seventeenth Amendment of the United States Constitution, makes voter qualifications rest on state law, even in Federal elections, *Gray v. Sanders*, 372 U. S. 368, 83 S. Ct. 801; and residency is a qualification properly required for both State and Federal suffrage, *Forssenius v. Harman*, 235 Fed. Sup. 66, Affirmed 85 S. Ct. 1177; and the several states may impose age, residence and other requirements on the right to vote in a state or federal election, so long as such requirements do not discriminate against any class of citizens by reason of race, color or other invidious ground, and so long as such requirements are not so unreasonable as to violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, *Dreuding v. Devlin*, supra.

Other recent United States Supreme Court cases upholding the right of the states to impose reasonable citizenship, age and residency requirements on the availability of a ballot are *Carrington v. Rush*, 85 S. Ct. 775, and, per-

haps the most recent one, *Kramer v. Union Free School District*, supra.

There are, of course, exceptions to the restrictions a state may place upon the right to vote. Race, color or previous condition of servitude is an impermissibile standard, by means of the Fifteenth Amendment of the United States Constitution, *Goimillion v. Lightfoot*, 81 S. Ct. 125. Sex is another impermissible standard, by reason of the Nineteenth Amendment to the United States Constitution.

In *Baker v. Carr*, 82 S. Ct. 691, again in the concurring opinion of Mr. Justice Douglas, it is said that a third barrier to a state's freedom in prescribing qualifications of voters, is the Equal Protection Clause of the Fourteenth Amendment. Discussing this, Justice Douglas said:

> "The traditional test under the Equal Protection Clause has been whether a state has made an 'invidious discrimination' as it does when it selects a 'particular race or nationality for oppressive treatment.'" See *Skinner v. Oklahoma*, 316 U. S. 535, 541, 62 S. Ct. 1110, 1113, 86 L. Ed. 1655. **"Universal equality is not the test; there is room for weighing.** As we stated in *Williamson v. Lee Optical Co.*, 348 U. S. 483, 489, 75 S. Ct. 461, 465, 99 L. Ed. 563, 'The prohibition of the Equal Protection Clause goes no further than the invidious discrimination.'" (Emphasis supplied.)

Our Supreme Court held, in *Baker v. Carr*, supra, that the cause was justiciable as being "matters of state governmental organization."

Nowhere is it even implied, in this lengthy discussion, both of Article I, Section 2, coupled with the Seventeenth Amendment, and of Article IV, Section 4, that state residence requirements placed on voters universally would violate the Equal Protection Clause of the Constitution. In the concurring opinion of Mr. Justice Stewart, in *Baker v. Carr*, supra, it is said:

"In case after case arising under the Equal Protection Clause the Court has said what it said again only last term that 'the Fourteenth Amendment permits the states a wide scope of discretion in enacting laws which affect some groups of citizens differently than others.' *McGowan v. Maryland*, 366 U. S. 420, 525, 81 S. Ct. 1101, 1105, 6 L. Ed. 2d 393. In case after case arising under that Clause we have also said that 'the burden of establishing the unconstitutionality of a statute rests on him who assails it.' *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U. S. 580, 584, 55 S. Ct. 538, 540, 79 L. Ed. 1070."

Justice Stewart went on to say that the *Baker* decision did not turn back on these settled precedents.

The Constitution supports Appellants' position. All previous holdings of this Court support Appellants' position. The action of Congress in rejecting an Amendment to the Voting Rights Act of 1970, establishing state durational residency requirements on voting, support Appellants' position. This Court's most recent action in upholding the 1970 Voting Rights Amendment as to National elections, and simultaneously rejecting such Federal interference in state elections (*U. S. v. Arizona*, 91 S.Ct. 260), supports Appellants' position.

CONCLUSION

It is submitted that the decision of the District Court fails to recognize the authority of states to provide residency requirements as a prerequisite to voting, under the authority granted to them by their own constitution and laws and by the Constitution of the United States of America. Further, the District Court has failed to recognize as controlling on them the past decisions of this Honorable Court dealing with this question.

The action of the United States District Court, in holding that the Tennessee constitutional and statutory pro-

visions fixing durational residency requirements for voting, should be set aside by this Honorable Court.

Respectfully submitted

THOMAS E. FOX
Deputy Attorney General
State of Tennessee

ROBERT H. ROBERTS
Assistant Attorney General
State of Tennessee
Attorneys for Appellants

DAVID M. PACK
Attorney General and Reporter
State of Tennessee
Supreme Court Building
Nashville, Tennessee 37219
Of Counsel

Certificate of Service

I, Robert H. Roberts, Assistant Attorney General of the State of Tennessee, one of the attorneys for the Appellants herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that I have served copy of the within Brief on behalf of Appellants, on Mr. James F. Blumstein, the Appellee in this cause, by mailing same to him by first class postage paid mail, in duly addressed envelope, to the School of Law, Vanderbilt University, 21st Avenue, South, Nashville, Tennessee 37203, this 2nd day of April, 1971.

Robert H. Roberts
Assistant Attorney General
State of Tennessee